

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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AMINA JOHNSON,

Plaintiff,

v.

GENERAL DYNAMICS INFORMATION  
TECHNOLOGY,

Defendant.

Case No. 2:24-cv-02033-APG-EJY

**ORDER  
AND  
REPORT AND RECOMMENDATION**

Pending before the Court is Plaintiff's Motion to Amend Complaint. ECF No. 42. The Court considered the Motion, the Opposition, and Reply.

**I. Introduction**

Plaintiff argues Defendant agreed to allow her to amend her Complaint because she filed her Motion to Amend before the deadline to do so. However, the scheduling order does not establish agreement by Defendant that Plaintiff may amend; rather, it establishes the date by which amendment may be sought. Plaintiff's request to amend was timely filed. Defendant offers no argument that the instant motion should be denied on the basis of timeliness. Thus, the Court considered Plaintiff's effort to add General Dynamics Information Technology's parent entity, General Dynamics Corporation ("GDC"), as a defendant to her discrimination and retaliation claims. The Court also considered Plaintiff's effort to state a negligence claim against GDC. The Court finds Plaintiff's proposed amended complaint futile with respect to her discrimination and retaliation claims, but not futile with respect to negligence.

**II. Discussion**

A. The Amendment Standard.

Federal Rule of Civil Procedure 15(a)(1) states that "[a] party may amend its pleading once as a matter of course" either "before being served with a responsive pleading" or "within 21 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar." If Rule 15(a)(1) does not apply, the party seeking to amend must obtain the opposing

1 party's written consent or the court's leave to file an amended pleading. Fed. R. Civ. P. 15(a)(2).  
 2 Well settled law establishes that a motion to amend a pleading under Rule 15(a)(2) "should freely  
 3 give leave when justice so requires." If the party seeks the court's permission to file an amended  
 4 pleading, "leave to amend lies within the sound discretion of the [district] court." *DCD Programs,*  
 5 *Ltd. v. Leighton*, 833 F.2d 183, 185-86 (9th Cir. 1987) (internal citation omitted). "This policy is 'to  
 6 be applied with extreme liberality.'" *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051  
 7 (9th Cir. 2003) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir.  
 8 2001)).

9 When considering whether to grant or deny a motion seeking leave to amend a complaint,  
 10 the Court may consider whether there is: (1) bad faith; (2) undue delay; (3) prejudice to the opposing  
 11 party; (4) futility in the amendment; and (5) whether plaintiff has previously amended her complaint.  
 12 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Here, the issue is whether Plaintiff's  
 13 proposed amendment is futile. To deny a request to amend based on futility requires the Court to  
 14 find there is no set of facts that can be proved under the amendment that would state a valid claim.  
 15 *EBET, Inc. v. Aspire Global International Limited*, Case No. 2:23-cv-01830-GMN-DJA, 2024 WL  
 16 2059335, at \*1 (D. Nev. May 8, 2024) (internal citation omitted).

17 B. Failure to Exhaust Administrative Remedies Renders Plaintiff's Discrimination and  
 18 Retaliation Claims Against GDC Futile.

19 While Plaintiff does not attach her Charge of Discrimination to her proposed amended  
 20 complaint, Defendant provides a copy of this document as an exhibit to its Response. ECF No. 43-  
 21 2. The Charge of Discrimination identifies the Respondent as "GDIT - General Dynamics  
 22 Information Technology." *Id.* A plaintiff's failure to name a party in an EEOC charge generally  
 23 prevents the claim from proceeding against that unnamed party because the unnamed party would  
 24 not have had an opportunity to respond to the charges before the EEOC. *Ranza v. Nike, Inc.*, 793  
 25 F.3d 1059, 1076 (9th Cir. 2015). Here, there is no mention of GDC in Plaintiff's Charge of  
 26 Discrimination. ECF No. 43-2. Even a broad reading of the Charge confirms nothing would suggest  
 27 that any entity other than GDIT was allegedly responsible for the conduct about which Plaintiff  
 28 complained. *Id.* The allegations in Plaintiff's proposed amended complaint show that the address

1 identified at which GDIT would have been sent a copy of the Charge is different than the address at  
 2 which GDC operates. *Compare id. and* ECF No. 42 at 4 ¶ 2. Nothing before the Court suggests  
 3 GDC ever received let alone had an opportunity to respond to the Charge.

4 Further, well settled law establishes “evidence of a parent-subsidary relationship is  
 5 insufficient to impute liability to the parent corporation” under the laws enforced by the EEOC such  
 6 as the Americans with Disabilities Act. *Murray v. Mayo Clinic*, 784 Fed.Appx. 995, 998 (9th Cir.  
 7 2019) (citing *United States v. Bestfoods*, 524 U.S. 51, 69 (1998)). When an EEOC charge is filed  
 8 against only one entity—the subsidiary—the complaining party has not exhausted her administrative  
 9 remedies against the parent. *Id.*

10 Based on the foregoing, the Court finds Plaintiff failed to exhaust her claims of  
 11 discrimination and retaliation against GDC and, therefore, granting leave to amend to state these  
 12 claims would be futile.

13 C. Plaintiff’s Negligence Claim is Not Futile.

14 Plaintiff seeks to state a claim of negligence against GDC; however, other than the title of  
 15 the claim, Plaintiff states no facts under this cause of action. ECF No 42 at 14. Moreover, what  
 16 allegations the Court found in the proposed amended complaint all relate to Plaintiff’s discrimination  
 17 and retaliation claims, which she did not exhaust.<sup>1</sup> In the absence of any allegations supporting a  
 18 cause of action sounding in negligence—other than a restatement of unexhausted discrimination and  
 19 retaliation claim—the Court finds Plaintiff has not stated a viable negligence claim. *See Antone v.*  
 20 *Wells Fargo Financial National Bank*, Case NO. 3:18-cv-00236-LRH-WCG, 2018 WL 11471768,  
 21 at \*4 (D. Nev. Nov. 29, 2018) (internal citation omitted). Nonetheless, the Court finds a claim of

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22 <sup>1</sup> Plaintiff alleges, in relevant part: (1) “the parent company took adverse action based on Johnson’s race and  
 23 disability”; (2) “she understood the parent company had knowledge of the open investigation into the discriminatory  
 24 behavior of the white team member”; (3) “the parent company should have enforced the discrimination and retaliation  
 25 policy at GDIT and provided a safe environment for Johnson”; (4) “Johnson contends that the parent company had  
 26 knowledge that Johnson was engaged in protected activities and did nothing to prevent their wholly owned company  
 27 from retaliating against her”; (5) “Johnson reached out to anyone in General Dynamics who would put an end to her  
 28 white project manager[’s] constant harassment”; (6) Johnson contends that the parent company ‘willfully chose’ to cover  
 up the discriminatory behavior of the white employees and victimize Johnson, a Black woman”; (7) Johnson contends  
 the parent company failed to protect her, a Black woman, and intentionally chose with malice to cover up the white  
 employees’ discriminatory violation”; (8) “Johnson contends the parent company failed to deter other Black women  
 from coming forward and intentionally chose with malice to cover up the white employees’ actions;” (9) “Johnson  
 contends that the parent company’s failure to protect her implicitly encouraged the white employee’s actions.” ECF No.  
 43-2 at 5 and ¶¶ 7, 21, 27, 33, 36, 45, 46, 47.

1 negligence against GDC is not necessarily futile. Plaintiff must take note, however, that even  
2 assuming she can state a negligence claim against GDC, she must also assert a basis for the federal  
3 court to exercise jurisdiction over such claims.

4 **III. Order**

5 IT IS HEREBY ORDERED that Plaintiff's Motion to Amend (ECF No. 42) is DENIED  
6 without prejudice and with limited leave to amend.

7 IT IS FURTHER ORDERED that Plaintiff is granted leave to file a second motion to amend  
8 her operative Complaint, together with a renewed proposed amended complaint, for purposes of  
9 attempting to state a tort claim, such as negligence, against General Dynamics Corporation over  
10 which the Court may exercise jurisdiction. That is, if Plaintiff chooses to do so, a second motion to  
11 amend, together with a renewed proposed amended complaint, **must** include (1) all claims, and the  
12 factual basis in support of all claims, she wishes to assert against General Dynamics Information  
13 Technology, (2) all claims she seeks to assert against General Dynamics Corporation, and (3) the  
14 basis for the Court's exercise of jurisdiction over any claim asserted against General Dynamics  
15 Corporation.

16 IT IS FURTHER ORDERED that if Plaintiff chooses to proceed with a second attempt to  
17 amend her operative Complaint, rather than proceed on claims currently stated against General  
18 Dynamics Information Technology, then the renewed motion to amend and the proposed amended  
19 complaint **must** be filed no later than **April 4, 2025**. If no renewed motion to amend and proposed  
20 amended complaint is filed by April 4, 2025, this case will proceed against General Dynamics  
21 Information Technology based on the current operative complaint.

22 **IV. Recommendation**

23 IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Amend (ECF No. 42) be  
24 DENIED WITH PREJUDICE to the extent Plaintiff seeks to assert discrimination or retaliation  
25 claims against General Dynamics Corporation because she failed to exhaust administrative remedies.

26 Dated this 14th day of March, 2025.

27   
28 ELAYNA J. YOUCHAK  
UNITED STATES MAGISTRATE JUDGE

**NOTICE**

Under Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court holds the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). The Ninth Circuit also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).